IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 31 OF 2006

Laximan Gurav,
s/o. Fatti Guvra, r/o. Belwada,
Poriem, Sattari, Goa
presently in
Central Jail Aguada, Aguada, Goa. ..... Appellant.

V/s.

State of Goa,
through Public Prosecutor,
Panaji, Goa. ..... Respondent.

Mr. M.P. Amonkar, Advocate for the appellant.

Mr. C. A. Fereira, Public Prosecutor for the State/Respondent.

CORAM : D.B. BHOSALE, J.

DATE : NOVEMBER 27, 2007.

ORAL JUDGMENT :

This appeal is directed against the Judgment and Order dated 31.12.2005, passed by the Sessions Judge, Panaji in Sessions Case No. 26/2004, convicting the appellant-accused of the offence under Section 304-I of the Indian Penal Code (for short "IPC") and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/- and in default, to undergo Simple Imprisonment for six months. The Court has also

directed to pay the fine amount, if recovered, to PW.8-Sita Gurav, the widow of Rama Gurav, the deceased.

2. The case of the prosecution is that on 26.2.2004, at 11.30 hours, PW.14-Sudan Rane had cut some branches of a jack fruit tree in the compound vicinity of Rama Gurav, the deceased. When the accused came to know about the branches of the jack fruit tree were being cut, he immediately rushed to the Round Forester and made a complaint against Rama Gurav, Mahadev Gurav and Sudan Rane. The Round Forester, who was examined as a witness in the present case being PW.16, sent two Forest Guards, viz. PW.9-Uttam Bhagat and PW.10-Suresh Vernekar to verify the fact and to submit report. Accordingly, they went to the site and while they were taking measurements, the accused also reached the site. Thereafter there was wordly altercation between the accused and Rama Gurav over the cutting of branches of the jack fruit tree. It is alleged that the accused removed a concealed knife from his shirt and stabbed Rama Gurav on the right side of chest. As a result of the blow, Rama Gurav collapsed in the courtyard and at that time, the accused inflicted another blow on the back of the deceased. This incident was allegedly witnessed by PW.8-Sita Gurav, PW.9-Uttam Bhagat and PW.10-Suresh Vernekar.

3. The prosecution, to bring home the guilt of the accused, has examined as many as 23 witnesses, including 3 eye witnesses, two neighbours, panchas, etc. They all have supported the prosecution case.

4. The defence propounded by the accused is that when he reached the site near the house of Rama Gurav, he abused the accused with filthy words and then brought a knife and when he tried to stab the accused, there was a scuffle in which the deceased sustained stab injuries which, ultimately, resulted in his death. Admittedly, the deceased sustained only two stab injuries, out of which one, according to PW.22-Dr. Rodrigues, was fatal. The evidence of recovery of the knife is also led by the prosecution and that has been accepted by the learned trial Judge as a corroborative piece of evidence. The medical evidence also supports ocular version. Considering the entire evidence on record and the defence propounded by the accused, the trial Court has convicted the accused under Section 304-I of the IPC, holding that the offence was committed without premeditation in sudden fight in the heat of passion upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner.

5. I heard the learned Counsel for the appellant. He fairly stated that he has instructions to seek only reduction of the sentence and not acquittal

of the accused. He submitted that the accused is a young man with a family. He is not habitual offender and except the instant case, there are no criminal antecedents at his credit. He then submitted that in any case and has rightly been held, the offence had not been committed with premeditation and it was committed in a fit of rage, upon a sudden quarrel. He, therefore, submitted that the manner in which the incident occurred, the sentence may be reduced to undergo and the fine may be enhanced, to be payable to the wife of the deceased. The learned Public Prosecutor did not oppose the prayer seriously and submitted that the accused has already undergone the sentence of about 3 and half years and let him undergo some more period of imprisonment. Insofar as fine amount is concerned, he submitted that it may be enhanced to Rs.25,000/- to be paid to the wife of the deceased.

6. Having considered the submissions and the findings recorded by the trial Court in the impugned judgment and more particularly, in paragraph 40 thereof, I am inclined to accede to the prayer made by the learned Counsel for the appellant. It would be relevant to reproduce the observations made by the learned trial Judge in paragraph 40 of the impugned judgment. Paragraph 40 reads as under :

> "Now coming to the nature of the offence, as stated earlier, the records indicate that the father of the accused had informed the accused about cutting of the branches

by Rama Gurav. The accused did not straight away go to the house of Rama Gurav, but went to the Round Forest Office and lodged the complaint against Rama Gurav for cutting the trees. The evidence of Round Forest Officer PW.16/Mangaldas Devsikar indicates that he had deputed the Forest Guards to the place of incident and had also directed the accused to remain present at the place of incident. Thus, it is evident that the accused had not gone to the place of incident with an intention of committing any offence but he had gone to the place of the incident as per the directions of PW.16/Mangaldas Devsikar and this rules out the possibility of premeditation. The evidence of PW.9/Uttam Bhagat indicates that there was altercation between Rama Gurav and the accused over cutting of the tree. The evidence of PW.22/Dr. E. J. Rodrigues also indicates that the accused had an incised cut of 1 cm x 1 mm vertically placed over medial aspect of right arm 3 mm from thumb nail caused by sharp weapon. All these factors show that there was a sudden fight between Rama Gurav and the accused over cutting of the branches and in the heat to passion the accused inflicted two blows of the knife on Rama Gurav. It is also to be noted that though the accused had inflicted two blows of knife, only one blow which caused injury no.1 was fatal in ordinary course of nature. The injury no.1 was also not inflicted on the vital part of the body and as such it can be said that the accused had not taken undue advantage or the accused had not acted in cruel or

> unusual manner. Considering all the circumstances, in my considered opinion, the case of the accused comes within exception 4 to Section 300 of Indian Penal Code, with the result that the offence committed by the accused is culpable homicide not amounting to murder."

7. Having regard to overall facts and circumstances of the case and the submissions advanced by the learned Counsel for the parties, the appeal is partly allowed. The judgment and order of conviction impugned in the present appeal stands confirmed. In so far as first paragraph of the operative portion of the judgment is concerned, it stands modified in the following terms :

The accused is sentenced to undergo Rigorous Imprisonment for 4 years and to pay a fine of Rs.25,000/- and in default, to undergo Simple Imprisonment for one year in respect of the offence under Section 304 – I of IPC. The fine amount, if recovered, shall be paid to PW.8-Sita Gurav, the widow of Rama Gurav. Rest of the operative portion of the impugned judgment remains unaltered.

The Incharge of the concerned police station shall furnish a copy of this Judgment to the complainant – Sita Gurav within six weeks from today apprising her, in writing, about the modification of the impugned judgment and her right to claim the amount of fine that would be deposited by

the accused. Appeal stands disposed of.

D.B. BHOSALE, J.

ssm.